

AMATEUR RADIO OPERATORS

OCTOBER 15, 1963.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 920]

The Committee on Commerce, to whom was referred the bill (S. 920) to amend sections 303 and 310 of the Communications Act of 1934, as amended, to provide that the Federal Communications Commission may, if it finds that the public interest, convenience, or necessity may be served, issue authorizations, but not licenses, for alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation by U.S. amateurs on a reciprocal basis, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

GENERAL STATEMENT

This bill would amend section 303 (dealing with operators) and section 310 (dealing with station licenses) of the Communications Act of 1934 to permit the Federal Communications Commission to authorize alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico, provided there is in effect a bilateral agreement between the United States and the alien's government for such operation by U.S. amateurs on a reciprocal basis. On September 3, 1963, a hearing was held. The principal sponsor of the bill, Senator Goldwater, and a number of officials of the American Radio Relay League, which includes nearly 100,000 United States and Canadian amateurs in its membership, testified in support of the bill. In addition, the record contains a number of letters relating to the legislation. No person testified in opposition.

HISTORY AND NEED FOR LEGISLATION

A bill (S. 2361) was introduced in the 87th Congress to amend the Communications Act to provide for licensing of alien amateur operators by the Federal Communications Commission if it found the national security would not be endangered. No hearings were held on that bill. However, agency reports indicated problems with a full-scale licensing procedure in the case of aliens and disclosed a number of technical problems with the bill's language. The present bill was drafted to take into account the issues raised in certain agency reports on S. 2361.

S. 920 would permit the United States to enter into reciprocal agreements whereby our amateurs would receive authority to operate in selected foreign countries in return for the United States granting their amateurs a similar privilege here. Such action is now prohibited by the Communications Act which, with respect to amateurs, allows only U.S. citizens to operate within our boundaries. The sole exception to this is Canadian citizens given such privileges in a 1952 treaty between the United States and Canada. Testimony was received that the 1952 treaty with Canada on this subject has worked well. A simple registration procedure is followed, with the amateur using his own call signs, together with appropriate designation of the area in which he is operating.

While 31 countries presently extend to our amateurs the privilege of operating in their countries despite the absence of reciprocal privileges for their citizens, many other countries refuse to extend such privileges except on the basis of reciprocity. Moreover, the lack of reciprocity has given rise to some ill will and misunderstanding. At present there are bilateral agreements with some 17 nations, including Mexico and many Latin American nations, permitting our radio amateurs to exchange noncommercial third-party messages with amateurs licensed in those countries. The committee received testimony that improved international good will and understanding would result from increased person-to-person contact aided by passage of the bill. The view was also expressed that proposals advanced in current discussions with the Peace Corps concerning possible use of surplus and donated equipment to introduce such communications to some parts of the world would be aided by adoption of this bill.

Testimony was received that the fact such legislation promotes international good will was manifested at the Ninth Plenary Assembly of the International Radio Consultative Committee (CCIR), held in Los Angeles in 1959. The 86th Congress that year approved Senate Joint Resolution 47 which permitted amateurs of foreign nations to operate a special events amateur radio station established for the conference, on proof that each held a current amateur license issued by his government. It was indicated that the participants were most appreciative of the U.S. courtesy in extending such privileges.

A main purpose of the bill is to help American citizens—not only tourists but also those who reside overseas, such as military personnel, diplomatic personnel, missionaries, Peace Corps workers, and others who may wish to pursue their amateur radio hobby while away from home. In this regard, it is noted that the United States has 258,347 amateurs while all other countries have a combined total of only 112,238. This, coupled with the extensive travel of our citizens

abroad, indicates the potentially greater extent to which our own citizens may benefit by this bill.

AGENCY VIEWS

A number of interested agencies, including the Federal Communications Commission, and the Departments of State, Justice, and Defense filed comments on the bill. The Department of Defense supported the bill and the other named agencies were substantially of the view that they did not object to the bill in principle if considerations of national security are properly provided for.

SECURITY CONSIDERATIONS

Several witnesses testified that whatever security problems inhere in the use of radio presently exist and that the type of procedure contemplated by this bill would not create any new ones. It was emphasized that anyone bent on use of radio for subversive activities would not be impaired by absence of a proper authorization for use of radio. Moreover, it was stated that amateur radio would be among the least desirable for clandestine use. The view was expressed that with rapid jet air service carrying diplomatic pouches, with high speed and coded teletype services available by cable, as well as by radio incapable of being monitored, it is hard to believe a foreign government would seek to use the privilege proposed by S. 920 as a means of transmitting high priority information from this country.

With regard to a similar problem, your committee held hearings in the 87th Congress on S. 3252 and H.R. 11732, which became Public Law 87-795, that amended the Communications Act of 1934 to permit the President to authorize foreign governments to operate low-powered radio stations at their embassies in the District of Columbia.

Under S. 920, any potential security problems would be minimized initially by the prerequisite of a bilateral agreement, and by the normal precautions taken in the issuance of visas to permit entry into the country. However, because some agencies had unresolved problems with possible security aspects of the bill, a meeting was held with the interested agencies to discuss and work out the problems involved in the security question. A procedure agreeable to those agencies was devised and appropriate amendatory language prepared, which amendment the committee adopted in order to clarify the matter. In the appendix to this report is a letter dated September 30, 1963, from the Federal Communications Commission, concurred in by the Departments of State, Justice, and Defense, and the Central Intelligence Agency, on this subject.

COMMITTEE AMENDMENTS

To meet the agency reservations noted with respect to security, your committee feels that the bill should be made more specific in this regard and adopted the following amendment: After the word "operators" at page 2, line 18 and page 3, line 9 add:

Provided, That when an application for an authorization is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such

agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatibility of the request with the national security: *And provided further*, That the requested authorization may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the request.

The Department of Defense suggested as a technical amendment that the words "if it finds that the public interest, convenience, or necessity may be served" be deleted from the title of the bill because this requirement does not appear in the text of the bill. The committee believes this language is unnecessary and, therefore, deleted it.

A number of technical amendments have been made to conform with present wording of the Communications Act:

Page 2, line 3, delete "clause" and substitute "subsection".

Page 2, line 7, delete "clause" and substitute "subsection".

Page 2, line 9, delete "part (1) of this clause" and substitute "paragraph (1) of this subsection".

Page 3, line 1, delete "clauses" and substitute "paragraphs".

PROCEDURES TO BE FOLLOWED

Upon enactment of S. 920, as amended herein, the way would be clear for the executive branch to enter into bilateral agreements with such nations as it deems desirable. There was testimony that a bilateral agreement could be effected through the simple and effective procedure of an exchange of notes by our Department of State and the appropriate department of the other government, in the same or a similar manner as that now followed in reaching third-party traffic agreements under which amateurs of the two countries may exchange messages for third parties. The Department of State has indicated that in negotiating such agreements it would coordinate its activities with other interested Government agencies. It is expected, of course, that the Federal Communications Commission will render technical assistance in this regard.

This bill gives very wide latitude to the Federal Communications Commission in imposing such terms and conditions as may be necessary in the public interest. It specifically provides that other provisions of the Communications Act and of the Administrative Procedure Act shall not be applicable to any request or application for, or modification, suspension, or cancellation of, any such authorization. Thus, the authorization is of a somewhat unique variety and is not entitled to the protections ordinarily associated with a licensing procedure. As testified, hearings would not be required and termination, which could be for any reason, may be in any manner and without prior notice. As an example of the Commission's latitude, one witness stated it could restrict operation by a noncitizen amateur to a specific location or area, to a specific frequency or frequencies, to specific modes of operation such as continuous wave Morse code, amplitude modulation voice, or single sideband voice, and/or to specific hours of the day. It could require all transmissions to be in English, have call letters or signs transmitted at more frequent intervals than required for citizen amateurs, or require that logs of all transmissions and operations be submitted at regular intervals, etc.

In short, such procedures as are deemed desirable may be incorporated into the bilateral agreements or into rules, adopted without the necessity of public rulemaking procedures under the Administrative Procedure Act, promulgated by the Commission.

Using such forms as the Commission may adopt, an alien amateur, whose country has the required reciprocal agreement with the United States, may request authority from the Federal Communications Commission to operate his amateur radio station in the United States. It is not the intent of the committee to establish the procedure to be followed. Some testimony indicated the request could be forwarded through our consul in the country involved, who could verify the fact that the individual is so licensed by his home country. In any event, once the Commission receives the request, together with some verification that the individual is properly licensed by his home country, and the requisite bilateral agreement is in effect, it then becomes a matter solely within the discretion of the Commission as to whether the authority should be granted and, if so, the terms and conditions of the grant.

It is the hope of the committee that the Federal Communications Commission, in working out the procedures implementing this legislation, will not establish cumbersome procedures that may defeat the objectives that underlie the purpose of the bill. It should be noted here that time will frequently be of the essence when authorizations are requested, where perhaps vacation and travel plans are made on rather short notice. Delays necessitated by coordinating with so many agencies must not be permitted to derogate from the very type of good will which the bill intends to promote. The committee expects, therefore, that all agencies involved will treat such matters expeditiously.

CONCLUSION

The committee believes that with the security safeguards written into it, the bill is in the national interest. As noted, it will potentially benefit any of the quarter of a million U.S. amateur radio operators, and it is not expected to impose costly or burdensome requirements on any agency.¹

AGENCY COMMENTS

A letter from the Federal Communications Commission to the committee chairman dated August 1, 1963, to Mr. Phillip S. Hughes dated August 27, 1963, and the Commission comments dated July 3, 1963; and letters from the Department of the Air Force dated August 28, 1963; Department of Justice dated August 29, 1963, and May 17, 1962; and the Department of State dated August 27, 1963, follow:

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 27, 1963.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN MAGNUSON: This is in reply to your request seeking the Commission's comments on S. 920, a bill to permit the

¹ The record indicates that, under the 1952 treaty with Canada providing for similar operations, latest available figures show that for a 1-year period, 1,272 U.S. amateurs received authorizations to operate in Canada, while only 453 Canadians obtained authorizations to operate in the United States. It was estimated that, aside from Canada and Mexico, the number of requests received by virtue of this bill would probably not exceed 200 to 300 per year.

Commission to issue authorizations to alien amateurs licensed by their own country where a bilateral agreement is in effect granting reciprocal privileges to U.S. amateur radio operators.

Enclosed please find six copies of our comments on S. 920. We are advised by the Bureau of the Budget that, from the standpoint of the administration's program, there is no objection to the presentation of this report to your committee.

Also enclosed are six copies of the Commission's letter of August 1, 1963, to the Bureau of the Budget expressing the Commission's views on the proposed comments of the Departments of State, Justice, and Defense on this bill. It is our understanding that the separate views of these Departments will be furnished to you directly by those Departments.

Sincerely,

ROBERT E. LEE, *Acting Chairman.*

COMMENTS OF THE FEDERAL COMMUNICATIONS COMMISSION ON
S. 920, A BILL TO AMEND SECTIONS 303 AND 310 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, WITH RESPECT TO ALIEN
AMATEUR RADIO OPERATORS

S. 920 would amend section 303 (dealing with operators) and section 310 (dealing with station licenses) to provide that the Federal Communications Commission may, if it finds that the public interest, convenience, or necessity may be served, issue authorizations, but not licenses, for alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation by U.S. amateurs on a reciprocal basis. The bill also provides that other provisions of the Communications Act and the Administrative Procedure Act will not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

This Commission has no objection, in principle, to permitting operation by alien amateurs on a reciprocal basis. However, as Congress is aware, such licensing would constitute a departure from the general concept embodied in the Communications Act against granting radio station licenses or radio operator licenses to aliens. At the present time, there are only two exceptions to this prohibition contained in sections 303(l) and 310(a) of the Communications Act against the granting of radio operator licenses and radio station licenses to aliens. The first was contained in a convention between the United States and Canada, effective May 15, 1952 (TIAS No. 2508), which permits citizens of either country who are station licensees to operate certain radio equipment, including amateur radio stations, while in the other country. The second exception results from amendments to sections 303(l) and 310(a), adopted in 1958 (Public Law 85-917), which permit the licensing of certain alien pilots flying aircraft in the United States.¹

The Commission commented on a bill in the 87th Congress, S. 2361, also designed to permit alien amateurs to operate in the United States.

¹ Sec. 310(a) of the Communications Act also provides that nothing in that subsection shall prevent the licensing of radio apparatus on board any vessel, aircraft, or other mobile station of the United States when such apparatus is required by law or treaty.

S. 920 was apparently drafted in an attempt to meet some of the factors which the Commission indicated in its earlier comments should be given careful consideration if Congress determined that legislation permitting reciprocal authorization of alien amateurs should be enacted.

The Commission's position can be summarized as follows: While the Commission has received a small number of sporadic inquiries from U.S. citizens desiring to use their amateur equipment in other countries and who cannot do so because the United States does not grant reciprocity, we have no indication that the interest in the matter, or its merits, considering the problems involved, would warrant our active support of the measure. We do, however, have no objection in principle—should the Congress determine such legislation is in the public interest.

One of the principal difficulties with any such proposal is the question of national security. The Commission's chief concern with S. 2361 was based on the requirement that the Commission find that the national security not be endangered by such grant. At that time, we pointed out our strong feeling that the Commission is not the appropriate agency to assume such responsibility. Our comment continued:

"* * * This Commission is not staffed to make such national security findings with reference to alien applicants. There would appear to be a serious problem concerning the Commission's ability to obtain the information necessary to carry out this sensitive task as well as our ability to evaluate adequately whatever information is obtained. It should be noted that this Commission has not been given the task of making security clearances for alien applicants under the two exceptions which now exist; e.g., with respect to foreign pilots and Canadian mobile equipment. To the extent, therefore, that national security considerations are involved, we believe they should not be the responsibility of this Commission * * *."

While S. 920 would not specifically place this burden upon the Commission, and while reciprocal agreements—which would likely be limited to friendly nations—might reduce the national security problem—consideration of national security would remain in individual cases.

What the Commission would prefer—should Congress determine some legislation along this line is desirable—is that the Commission's role in the matter be essentially a ministerial function of registering such operators. Thus, enactment of a bill by the Congress would itself be a determination that it is in the public interest to permit the operation. The Department of State and other appropriate agencies concerned could be given the responsibility of determining with which countries reciprocal agreements would be concluded. And—of overriding importance—the Department of Justice or other appropriate agency or Government, other than the Federal Communications Commission, should be given the statutory obligation to undertake whatever security measures are appropriate and to report its findings and recommendations to the Commission.

Under this type of procedure the Commission would then—without the necessity of a public interest finding (which, in effect, would have been made by the Congress) and without any responsibility for security determinations (which would have been accomplished by other appropriate agency)—perform the ministerial task of registering

such individuals in the absence of any indication from the agency performing the security duties that registration of particular individuals should be denied. The Commission also could engage in such limited monitoring of such operations as proves necessary and feasible. These are essentially the same functions the Commission already performs under the treaty with Canada on this subject.

Any such legislation should provide that registration, renewal, or termination or registration shall be in accordance with procedures established by the Federal Communications Commission (without the necessity of rulemaking) and not entitled to any substantive or procedural benefits of the Communications Act or the Administrative Procedure Act.

As already mentioned, operation similar to that intended is permitted with respect to Canadian citizens in the United States by virtue of a treaty which was ratified by the Senate. The main purpose of S. 920 seems to be to pave the way for some similar authorization with respect to citizens of other countries—but apparently through executive agreements not requiring Senate ratification. If this is what is intended, it may be profitable, should Congress determine that some such legislation is in the public interest, to explore the desirability of a separate statute embodying the entire statutory scheme, and placing specific security responsibility outside the Commission.

In the event the committee determines that some legislation dealing with this subject is in the public interest, the Commission would be pleased to make its staff available to provide such technical assistance as may be desired.

Adopted: July 3, 1963.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 1, 1963.

MR. PHILIP S. HUGHES,
*Assistant Director for Legislative Reference,
Bureau of the Budget, Washington, D.C.*

DEAR MR. HUGHES: This refers to your request of July 26 for the Commission's views with respect to the proposed comments of the Departments of State, Justice, and Defense on S. 920, a bill to amend sections 303 and 310 of the Communications Act of 1934, as amended, with respect to alien amateur radio operators.

The Commission's comments on S. 920 were adopted by the Commission on July 3 and submitted to the Bureau of the Budget shortly thereafter. Several clarifying telephone discussions were held by representatives of the Commission and your staff.

We find nothing in the comments of the Departments of State, Justice, and Defense which is inconsistent with the Commission's views on S. 920. The Department of Defense indicates that "the United States and its representatives have frequently been embarrassed because we have denied citizens of other countries the right to operate radios in this country and have, at the same time, sought to secure for our citizens amateur rights in foreign countries. The United States would appear in a more favorable light if we were to permit amateurs of other countries to operate radio stations here under the same safeguards that other governments apply to foreigners who

operate amateur radios." The Commission in its comments notes that it has received only "a small number of sporadic inquiries from U.S. citizens desiring to use their amateur equipment in other countries and who cannot do so because the United States does not grant reciprocity" and that "we have no indication that the interest in the matter, or its merits, considering the problems involved, would warrant our active support of the measure" adding that we have no objection in principle should Congress determine such legislation is in the public interest.

These positions are, therefore, not necessarily inconsistent—the Defense Department saying that because of information available to it—it supports the bill, and this Commission saying its files do not contain evidence of sufficient interest in the matter to warrant its active support of the bill—in view of the problems involved.

Defense suggests that the words "if it [FCC] finds that the public interest, convenience, or necessity may be served" be deleted from the title because they do not appear in the text of the bill. The Department of Justice notes that the bill provides for issuance of authorizations by the Commission "under such conditions and terms as it may prescribe." It also notes that the opening sentence of section 303 provides "Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall * * *" and suggests clarification of the language of the bill to avoid any question as to the findings required to be made by the Commission.

To expand slightly upon the Commission's comments in this regard, it is our position that—even though we don't have information which warrants our active support of the bill, its enactment by the Congress would itself be a public interest determination of the desirability to permit such operations under the conditions the Congress may set forth. Because section 303 contains the public interest language, it would seem unnecessary to include similar language in either the title or text. The Commission under the public interest standard would, therefore, consider any information in its files which would bear on whether the requested operation by a particular person would serve the public interest. For example, assuming such a statute and bilateral agreements, it would be pertinent for the Commission to consider that someone requesting such authority had previously operated under such authority in violation of Commission rules. The language "under such conditions and terms as it [FCC] may prescribe" would simply provide us with additional flexibility in tailoring the operations in a particular case to provide for operation in the public interest.

Justice refers to its earlier comments on S. 2361, 87th Congress, and concludes that "in the light of the security considerations set forth in our report on S. 2361, it would seem that no authorization should be granted unless it is determined that the national security would not be endangered thereby." It also adds, in its S. 2361 comment that "aside from security considerations, which might remain substantially the same regardless of whether the bill is enacted, the subject of this legislation is not a matter for which the Department of Justice has primary responsibility and accordingly we make no recommendation as to its enactment"—the clear implication being

that the Department of Justice does have primary responsibility in the security field.

Construing these two statements together, we would agree and have indicated in our comments that "the Department of Justice and other appropriate agencies of Government, other than the Federal Communications Commission, should be given the statutory obligation to undertake whatever security measures are appropriate and to report its findings and recommendations to the Commission."

It thus appears that Justice and the Commission are both insistent that whatever legislation may be enacted have due regard for questions of national security. The Department of Defense also appears to endorse this view when it says such a bill if it provides "adequate safeguards for the national security" would be of net benefit to the United States.

Because staff discussions with representatives of your office have indicated even more explicit statement of the Commission's position in this regard would be welcome—let me summarize the Commission views on the security problem:

1. While reciprocal agreements—presumably entered into with the more friendly nations—might mitigate security problems, consideration of national security would remain in individual cases especially since we are here dealing with aliens rather than our own citizens.

2. Congress—if it enacts such legislation—should assure itself that appropriate security measures will be undertaken by such agencies as it specifies.

3. The Commission has no expertise or staff to handle security investigations and security determinations should not be made by the FCC.

4. While the Commission would prefer simply to refer the names of those requesting such authority to an appropriate security agency and have that agency tell us whenever a request should be denied on security grounds, we are willing—should Congress so desire—to check with whatever security agencies Congress deems appropriate—and to receive information and/or recommendation from such agencies bearing on the security issue—which information would then be evaluated to the extent the Commission is able to do so—and a decision reached as to whether to grant or deny a request. The essentially ministerial function of the registration process we have suggested should be considered in this regard.

The Department of State's assumptions that it would negotiate the proposed bilateral agreements after appropriate coordination with other interested U.S. Government agencies accords with our view and the Commission is, of course, one of the interested agencies. The further assumption that the conditions and terms to be prescribed by the FCC would relate to technical operating details—also substantially accords with our view, but this Commission under such authority could also prescribe procedures and determine such matters as the geographic, technical, and time limits for such authority.

While this letter expands somewhat upon the security discussion in our comments, we deem the above to be fully consistent with the position taken therein and hope that this additional explanation will serve to clarify the matter.

This letter was adopted by the Commission July 30, 1963.

By direction of the Commission:

E. WILLIAM HENRY, *Chairman.*

DEPARTMENT OF THE AIR FORCE,
OFFICE OF THE SECRETARY,
Washington, August 28, 1963.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to S. 920, 88th Congress, a bill to amend sections 303 and 310 of the Communications Act of 1934, as amended, to provide that the Federal Communications Commission may, if it finds that the public interest, convenience, or necessity may be served, issue authorizations, but not licenses, for alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation by U.S. amateurs on a reciprocal basis. The Secretary of Defense has delegated to the Department of the Air Force the responsibility for expressing the views of the Department of Defense.

The purpose of S. 920 is as stated in its title. Specifically it would provide that the Federal Communications Commission, if it found that the public interest, convenience, or necessity would be served, could authorize alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico provided there was in effect a bilateral agreement between the United States and the alien's government for such operation by U.S. amateurs on a reciprocal basis.

Section 303(1) of the Communications Act of 1934, as amended (47 U.S.C. 303(1)), authorizes the Federal Communications Commission (FCC) to license as radio operators "such citizens of the United States as the Commission finds qualified." Section 310(a) of the same act prohibits the Commission from granting a radio station license to, among others, "any alien or representative of any alien." These prohibitions against alien ownership and operation of radio stations have been carried over from the original Radio Act of 1927 (44 Stat. 1162) for the protection and security of the United States and its military and civilian radio communication. Only two exceptions are permitted. The first is covered by a convention between the United States and Canada (TIAS No. 2508) concerning the operation of certain radio equipment, including amateur radio stations, by citizens of either country while in the other country. The second is contained in sections 303(1) and 310(a) of the Communications Act and concerns certain alien pilots flying aircraft in the United States.

In the past, the United States and its representatives have frequently been embarrassed because we have denied citizens of other countries the right to operate radios in this country and have, at the same time, sought to secure for our citizens amateur rights in foreign countries. The United States would appear in a more favorable light if we were to permit amateurs of other countries to operate radio stations here under the same safeguards that other governments apply to foreigners who operate amateur radios. It is believed that a bill which would permit reciprocal licensing of radio amateurs and, at the same time, provide adequate safeguards for the national security, would be of net benefit to the United States. Our status in the

community of nations requires such a course of action unless there are powerful reasons to the contrary.

Accordingly, the Department of Defense supports the enactment of S. 920.

The following technical change is recommended to the bill:

Delete the words "if it finds that the public interest, convenience, or necessity may be served," from the title of the bill. This requirement does not appear in the text of the bill.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,

JOSEPH S. IMIRIE,
Assistant Secretary of the Air Force.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., August 29, 1963.

HON. WARREN G. MAGNUSON,
*Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on the bill (S. 920) to amend sections 303 and 310 of the Communications Act of 1934, as amended, to permit the Federal Communications Commission to authorize the operation of amateur radio stations in the United States by certain aliens.

The title of the bill indicates that it would amend sections 303 and 310 of the Communications Act of 1934, as amended (47 U.S.C. 303, 310) to provide that the Federal Communications Commission may, if it finds the public interest, convenience, or necessity may be served, issue authorizations for alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico on a basis of reciprocity with foreign governments. It is noted, however, that the first suggested amendment following the enacting clause does not contain a specific requirement concerning "the public interest, convenience, or necessity" but provides for the issuance of authorizations by the Commission "under such conditions and terms as it may prescribe." In connection with the foregoing, the opening sentence of section 303 provides "Except as otherwise provided in this chapter, the Commission from time to time, as public convenience, interest, or necessity requires, shall— * * *". In view of the foregoing it is suggested that some clarification of the language of the bill is necessary in order to avoid any question as to the findings required to be made by the Commission.

The objective of the bill appears to be the same as that of S. 2361, 87th Congress, on which this Department submitted a report to your committee on May 17, 1962, pointing out security factors which are inherent in the field of communications. A copy of that report is attached for your convenience.

The bill differs from S. 2361 in that it would provide for the issuance of "authorizations" for unspecified periods of time, whereas S. 2361 provided for the issuance of "licenses" for any temporary period not in excess of 3 years. Also, while S. 2361 provided for the issuance of such licenses by the Commission "if it finds that the national security would not be endangered," no such provision is included in the bill.

In the light of the security considerations set forth in our report on S. 2361, it would seem that no authorization should be granted unless it is determined that the national security would not be endangered thereby.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., May 17, 1962.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bill (S. 2361), to amend sections 303 and 310 of the Communications Act of 1934 to provide that the Federal Communications Commission may, if it finds that the national security would not be endangered, issue licenses for the operation of an amateur station to certain aliens for any temporary period, not in excess of 3 years.

Under existing law the Federal Communications Commission is authorized to issue radio station operators licenses to qualified citizens of the United States. However, with respect to the operation of radio stations on aircraft the Commission also is authorized, if it finds that the public interest will be served thereby, to waive the requirement of citizenship in the case of persons holding U.S. pilot certificates or persons holding foreign aircraft pilot certificates valid in the United States on the basis of reciprocal agreements entered into with foreign governments (47 U.S.C. 303(e)). Aliens or representatives of aliens of the class described above also may be granted and may hold licenses for radio stations on aircraft although aliens or representatives of aliens generally may not be granted or hold such licenses (47 U.S.C. 310).

The bill would amend existing law (secs. 303 and 310 of the Communications Act of 1934) by enlarging the category of aliens who may be issued licenses. It would authorize the Federal Communications Commission to issue amateur operators' licenses and to issue licenses for amateur stations to aliens on a basis of reciprocity if the Commission finds that the national security would not be endangered.

As the committee is aware, dangers to the national security are inherent in the field of communications. In *Borrow v. F.C.C.*, 285

F. 2d 666, a case involving the refusal of the Commission to renew appellant's radio operator's license because of his failure to reply to a questionnaire concerning membership in the Communist Party or subversive organizations, the Court stated:

"Radio beams are the operational essence of quick modern communication and of the control of modern weapons. Not only the power to use these electronic devices but the power to interfere with waves being used by others should, it might properly seem to the Commission, be lodged in those whose loyalty to the United States is made to appear. Surely no such power should knowingly be accorded to those who belong to organizations advocating or teaching the overthrow of this Government by force or violence. At the very least, the Commission is entitled to know whether those who it licenses to control these devices belong to such an organization. Any program less than that simple necessity would be not only shortsighted but dangerous to the national security."

In August of 1960 the vice president of the Mutual Broadcasting System stated before the House Un-American Activities Committee that even a few Communist agents or sympathizers could play havoc with the conelrad emergency radio system. An Air Force representative said at the same hearing that a subversive agent could cause panic among the public if he gave false instructions over conelrad stations. Also, the vice president of the American Cable & Radio Corp. and its subsidiaries testified in 1957 that subversive technicians if placed in strategic spots, could copy Government codes and disrupt international communications.

Radio communication is an important tool to successful espionage operations in time of peace. In an emergency it is of even greater importance to espionage, sabotage, and other subversive operations, when diplomatic channels are not available.

The security considerations mentioned above are based largely on positions which have been asserted by the Federal Communications Commission and by experts in the communications field and it would seem that they would be in the best position to comment on what extent, if any, the provisions of this bill would add to such security problems.

Aside from security considerations, which might remain substantially the same regardless of whether the bill is enacted, the subject of this legislation is not a matter for which the Department of Justice has primary responsibility and accordingly we make no recommendation as to its enactment. There are however certain features of the bill to which attention is invited.

The amendment to section 303 would give the Commission power to revoke summarily any amateur operator license granted to an alien. However, the amendment to section 310 regarding licenses for amateur radio stations issued to aliens contains no similar provision. It is recommended, therefore, that the amendment to section 310 specifically provide for summarily closing any station licensed to an alien, in line with the provision for summarily revoking an alien operator's license.

Although the bill does provide for summary revocation of an amateur operator's license issued to an alien, it does not, in our opinion, make it sufficiently clear that an alien applicant for a license should not be entitled to a hearing. Since the issuance of licenses to aliens under the provisions of this bill might involve confidential consider-

ations relating to national security, it is suggested that you consider the addition of express language to the effect that alien applicants, notwithstanding any other provisions of the Communications Act or of the Administrative Procedure Act, would in no circumstances be entitled to any hearing rights.

On page 2, lines 5 and 25, appears the phrase "to which an alien owes permanent allegiance." That description is vague and might lead to doubt by the Commission in passing upon applications for licenses for amateur radio stations. It is suggested that this might be eliminated by substituting the language "of which the alien is a national, citizen, or subject."

Also it is noted that the bill would extend the privilege of obtaining such a license to any "alien." While that result may have been intended the term would include nonimmigrants such as aliens who are in the United States temporarily, passing in transit, or are here only for other short periods of time. It might even include aliens who came to the United States illegally.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

NICHOLAS DEB. KATZENBACH,
Deputy Attorney General.

AUGUST 27, 1963.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: I refer to your letter of March 1, 1963, requesting the Department's comments on S. 920, to amend sections 303 and 310 of the Communications Act of 1934, as amended, to provide that the Federal Communications Commission may, if it finds that the public interest, convenience, or necessity may be served, issue authorizations, but not licenses, for alien amateur radio operators to operate their amateur radio stations in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation by U.S. amateurs on a reciprocal basis.

The Department agrees in principle with the purposes of S. 920 and, on the assumptions that (1) the proposed bilateral agreements would be negotiated by the Department of State after appropriate coordination with other interested U.S. Government agencies and (2) the conditions and terms to be prescribed by the Federal Communications Commission would relate to technical operating details, the Department perceives no objection to this bill from the standpoint of foreign relations.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

Sincerely yours,

FREDERICK G. DUTTON,
Assistant Secretary
(For the Secretary of State).

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (new matter is printed in italic; and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

GENERAL POWERS OF THE COMMISSION

SEC. 303. Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall—

(a) * * *

(1) (1) Have authority to prescribe the qualifications of station operators, to classify them according to the duties to be performed, to fix the forms of such licenses, and to issue them to such citizens or nationals of the United States as the Commission finds qualified, except that in issuing licenses for the operation of radio stations on aircraft the Commission may, if it finds that the public interest will be served thereby, waive the requirement of citizenship in the case of persons holding United States pilot certificates or in the case of persons holding foreign aircraft pilot certificates which are valid in the United States on the basis of reciprocal agreements entered into with foreign governments;

(2) *Notwithstanding section 301 of this Act and paragraph (1) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation on a reciprocal basis by United States amateur radio operators: Provided, That when an application for an authorization is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatibility of the request with the national security: And provided further, That the requested authorization may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the request. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.*

(m)(1) * * *

LIMITATION ON HOLDING AND TRANSFER OF LICENSES

SEC. 310. (a) The station license required hereby shall not be granted to or held by—

(1) * * *

(5) * * *

Notwithstanding paragraph (1) of this subsection, a license for a radio station on an aircraft may be granted to and held by a person who is an alien or a representative of an alien if such person holds a United States pilot certificate or a foreign aircraft pilot certificate which is valid in the United States on the basis of reciprocal agreements entered into with foreign governments.

Notwithstanding section 301 of this Act and paragraphs (1) and (2) of this subsection, the Commission may issue authorizations, under such conditions and terms as it may prescribe, to permit an alien licensed by his government as an amateur radio operator to operate his amateur radio station licensed by his government in the United States, its possessions, and the Commonwealth of Puerto Rico provided there is in effect a bilateral agreement between the United States and the alien's government for such operation on a reciprocal basis by United States amateur radio operators: Provided, That when an application for an authorization is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatibility of the request with the national security: And provided further, That the requested authorization may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the request. Other provisions of this Act and of the Administrative Procedure Act shall not be applicable to any request or application for or modification, suspension, or cancellation of any such authorization.

(b) * * *

APPENDIX

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., September 30, 1963.

HON. JOHN O. PASTORE,
*Chairman, Subcommittee on Communications, Committee on Commerce,
U.S. Senate, Washington, D.C.*

DEAR CHAIRMAN PASTORE: Pursuant to a conference held September 5 with Nicholas Zapple, counsel to your subcommittee, and attended by representatives of the Departments of State, Justice, and Defense, Bureau of the Budget, and the Federal Communications Commission, the following understanding is submitted for inclusion in the Senate committee report on S. 920.

At that meeting, it was tentatively agreed among the staff representatives present that S. 920 should be made more specific with respect to matters of national security and the following amendment was proposed:

At page 2, line 18 and page 3, line 9, delete the period and add the following proviso:

"Provided, That when an application for an authorization is received by the Commission, it shall notify the appropriate agencies of the Government of such fact, and such agencies shall forthwith furnish to the Commission such information in their possession as bears upon the compatability of the request with the national security: And Provided further, that the requested authorization may then be granted unless the Commission shall determine that information received from such agencies necessitates denial of the request."

The Commission has considered this amendment and would support its conclusion in S. 920 or similar legislation which may be enacted. It is our understanding that pursuant thereto the FCC, upon receipt of a request for authorization of an operation by an alien amateur, would ask the Central Intelligence Agency and the Departments of Defense, Justice, and State to supply it with any information in their possession which bears on the particular request. While the Commission would not, of course, ignore information coming to it from other sources, its obligation in the security area would be limited to a check with the named agencies and making the finding that, with respect to national security, no information or recommendations before the Commission necessitate denial of the request.

The above-named agencies are those which are at this time considered to be the agencies referred to in the proposed amendment as "appropriate agencies of Government." Additionally, the Commission will be guided by the views of the named agencies, or by information coming to it from other sources, as to whether additional agencies should be contacted as circumstances warrant.

The Commission in acting on such requests will, of course, respect the confidential nature and sources of specific security information coming to its attention.

This letter has been coordinated with and concurred in by the Departments of Defense, Justice, and State, and the Central Intelligence Agency. The Bureau of the Budget has advised that there is no objection to the presentation of this report to the Congress from the standpoint of the administration's program.

This letter was adopted by the Commission September 11, 1963.

By direction of the Commission:

E. WILLIAM HENRY, *Chairman*.

